



October 2015

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Recommended Citation

Carl Landauer, *Legal Emblems and the Return of the Impressed*, 27 YALE J.L. & HUMAN. (2015).

Available at: <https://digitalcommons.law.yale.edu/yjlh/vol27/iss2/3>

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Cover Page Footnote

In the preface to *Legal Emblems and the Art of Law*, Peter Goodrich provides us with an image from Jacobus Bornitius's legal emblem book of 1654, *Emblematum ethico-politicorum*, entitled "Custom as second nature." (See Figure 1.) Goodrich has brought us into an odd world wherein well-dressed men, no arms in sight, can write with their feet using a quill between their toes and an inkwell set before them on the ground.

Legal Emblems and the Return of the Impressed

Peter Goodrich, *Legal Emblems and the Art of Law: Obiter depicta as the Vision of Governance*. New York: Cambridge University Press, 2014, Pp. xxvii, 281. \$99.00.

Carl Landauer*

INTRODUCTION: PARADISE LOST

In the preface to *Legal Emblems and the Art of Law*, Peter Goodrich provides us with an image from Jacobus Borritius's legal emblem book of 1654, *Emblematum ethico-politicorum*, entitled "Custom as second nature."¹ (See Figure 1.) Goodrich has brought us into an odd world wherein well-dressed men, no arms in sight, can write with their feet using a quill between their toes and an inkwell set before them on the ground. We are in an allegorical realm. There is no apparent reason why the artist chose this odd depiction of "second nature." Goodrich, however, will venture an explanation: "Borritius's armless scribe has learned to write with his feet. By minor extension, we can infer that the feet write, that it is our actions and not our words that are most believable, that are law for us."² He further explains that "the emblem shows quill and ink, page and lines inscribed without the use of the hand, suggest[ing] a subtle authorization of written law, of *ratio scripta*, of Latin, as the impress and mark of nature."³ That is the second nature referenced in the title of the emblem or, in emblem book terms, the *motto* presented with the image—although it is telling, as I will argue, that Goodrich tends to pay little attention to the motto in his discussion.⁴ Goodrich makes his stake clear here by explaining that the image precedes writing. He sees the image as an example of Derrida's *writing in general*, so that he can assert that what

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1. PETER GOODRICH, *LEGAL EMBLEMS AND THE ART OF LAW: OBITER DEPICTA AS THE VISION OF GOVERNANCE* xxii (2014).

2. *Id.* at xxiii.

3. *Id.*

4. There may be a claim that I am being unfair since his index references 69 items under "mottos" and 44 under "maxims," but ultimately those serve, from my perspective, more as a way to identify the images than they are of any particular significance to Goodrich.

we find here is “the custom and use, the immemorial practice that common lawyers call the *lex terrae*, a realm of prior images, of emblematic patterns that legal training and here the art of interpreting *obiter depicta*, things seen along the way to legal judgment, can help us apprehend.”⁵

What Goodrich is after in this book is to resuscitate the visual realm of law. He thus challenges us outright: “Why are we not researching and teaching a visual literacy of law?”⁶ For his part, Goodrich will engage an earlier “pictorial turn in law,”⁷ the early modern tradition of the emblem book, to aid him in his own pictorial turn. It is for that reason, Goodrich tells us, that he coined the “neologism”—and he is very fond of telling us when he has so fashioned new terms—of the book’s title, *obiter depicta*.⁸ His historical investigation, ultimately, is devised to help us understand more about the workings of law by giving us a more complete picture. His identification of *obiter depicta*, he tells us, “is intended as a significant and topical addition to the method and interpretation of contemporary law.”⁹ We have entered the strange world of armless scribes to teach us about our own legal world.

This review will enter that strange world, but first, in Part I, “Pay No Attention to the Lawyer Behind the Curtain,” it will place Goodrich’s effort in *Legal Emblems and the Art of Law* as a continuation and expansion of his larger project as reflected in earlier writings. Part II, “Covered Eyes and Missing Limbs: Goodrich on Emblems,” will then discuss Goodrich’s specific iconography, including his teasing out the meanings—and the plural here is important for him—of, for example, missing sight and missing limbs, as well as his important use of the contemporary Italian philosopher, Giorgio Agamben, to help him place the legal emblem book in a narrative of salvation and the end of time drawn from Christian eschatology. Part III, “Missing Forebears: Goodrich and Emblem Studies,” will address the astonishing absence in *Legal Emblems and the Art of Law* of the massive scholarship on emblem books and what that means for a reading of Goodrich’s book. Part IV, “Missing Narratives: Goodrich, History, and Constitutional Scholarship,” will work through two other related absences in Goodrich’s book, namely his lack of reference to the major historical developments contemporary with the publishing of the emblem books in his narrative as well as the context of political and constitutional thought of the sixteenth and seventeenth centuries, the intellectual context at the very legal and constitutional core of his study.

5. GOODRICH, *supra* note 1, at xxiii.

6. *Id.* at 23.

7. *Id.* at 55.

8. *Id.* at 23.

9. *Id.*

As mentioned above, *Legal Emblems and the Art of Law* is part of Goodrich's larger project of trying to erase law's modern self-image as a science and to repossess other, more vibrant and authentic modes of law in order to bring them to the foreground. In his *Legal Discourse* of 1987, Goodrich describes the "disciplinary mythology"¹⁰ of a legal profession confident in its own rational, scientific character. Goodrich parades various linguistic efforts to analyze law, and none is really able to crack law's self-mythology. They all seem to fail and are unable to return law's lost historicity and energy. Goodrich calls for a new mode of study that involves "the re-reading of the law and the rewriting of the legal textbook in the space opened by the concept of law as social discourse."¹¹ In short, Goodrich advocates replacing the current manner of legal thinking and self-description as a "discrete logic of intradiscourse," discourse carefully restrained *within* the walls of the science of law, with what he describes as "an accumulation and crystallisation of interdiscursive meanings."¹² *Law in the Courts of Love* (1996) begins by unearthing the existence of a High Court of Love or *Cour Amoureuse* established in 1400 by Charles VI of France with jurisdiction over the rules of love and comprised of judges selected by a panel of women.¹³ Goodrich uses the existence of long-forgotten courts of love to remind us of the broad range of human registers in the legal past. He frames his study as an effort to reconstruct legal language and text "in the languages of fate and destiny, cause and chance, in which they received their classical expression."¹⁴ *Legal Emblems and the Art of Law* now aims at reappropriating the visual in law's past. In this, Goodrich is also after mystery and otherworldliness. As he writes in his conclusion, "For all its humanism, the emblem tradition has strongly spiritual roots. It is time and again directed toward indicating the divine causes of things and the angelological structure of law."¹⁵ Although he prefaces this elsewhere, as he did in his article, "Specters of Law,"¹⁶ he builds on his earlier work, including *Legal Discourse* and *Law in the Courts of Love*, and vastly expands his archeological project of law's past in an effort to further broaden the range and meaning of law's present. I will describe his effort as a continuation and expansion of his larger project in Part I of this review, "Pay No Attention to the Lawyer Behind the Curtain."

Jacobus Borritius's scribe writing with his foot is only one of a large

10. PETER GOODRICH, *LEGAL DISCOURSE: STUDIES IN LINGUISTICS, RHETORIC AND LEGAL ANALYSIS* 206 (1987).

11. *Id.* at 208.

12. *Id.*

13. PETER GOODRICH, *LAW IN THE COURTS OF LOVE: LITERATURE AND OTHER MINOR JURISPRUDENCES I* (1996).

14. *Id.* at 165.

15. GOODRICH, *supra* note 1, at 247.

16. Peter Goodrich, *Specters of Law: Why the History of the Legal Spectacle Has Not Been Written*, 1 U.C. IRVINE L. REV. 773 (2011).

number of images of those who are sightless or missing hands and arms—as well as a population of misplaced hands and eyes—that inhabit Goodrich’s emblem book tradition. From a modern perspective, the personages of Goodrich’s emblems are strangely disenabled in multiple ways, only starting with being chained or crawling on all fours. Goodrich focuses particularly on those lacking eyesight and missing hands. For him, their various incapacities are multivalent or at least lead us to different interpretations in different images. The topos of eyes cast down, as in the depiction of the medieval jurist Bartolus of Saxoferrato among Antoine Lafréri’s mid-sixteenth-century collection of portraits, derives from the “tradition of self-effacement.”¹⁷ It may be important that Justice herself is sighted while the lawyers around her are blindfolded, establishing a hierarchy in which the judges must look to the sighted Justice herself for justice. Goodrich offers as well that “[i]f you cannot see it, you have to look elsewhere, use the inner eye, the eye of the spirit.”¹⁸ Basically, you are seeing the unseen. In addressing hands, Goodrich introduces, among other things, *chirology* or the rhetorical art of hand gesture. The absence of hands provides a referent for missing eloquence. He moves among variations on those themes to images of the blindfolded king surrounded by handless ministers and the king with a robe populated by numerous additional eyes and hands. The role of the minister and the judge is to provide ministerial functions to the eternal law mediated by the king. As Goodrich argues, these images reflect the adage that the sovereign rules but does not govern, essentially evoking the difference between sovereignty and administration. And that difference Goodrich draws from Giorgio Agamben, primarily in his study, *The Kingdom and the Glory*.¹⁹ There Agamben analyzes the distinction between the kingdom of God and administration through a detailed study of the developing role of *oikonomia*, from a classical term referring to household management to a religiously inspired term. Goodrich repeats Agamben’s final end of *inoperativity*, the eschatological folding in *oikonomia* and the Glory. And he is particularly attracted to Agamben’s crescendos of pure light: “As Agamben puts it, the closer one comes to the divinity, the greater the clamor of optical metaphors, and finally the crescendo of pure light that marks the divine as unseeable.”²⁰ Perhaps Goodrich’s most fundamental learning from Agamben is the distinction between sovereignty and administration, so that the legal emblem points us not only to administration but also to things divine: “The legal emblem is most simply the legitimate image of law as a mixed knowledge and

17. GOODRICH, *supra* note 1, at 41.

18. *Id.* at 161.

19. GIORGIO AGAMBEN, *THE KINGDOM AND THE GLORY: FOR A THEOLOGICAL GENEALOGY OF ECONOMY AND GOVERNMENT* (Lorenzo Chiesa & Matteo Mandarini trans., 2011).

20. GOODRICH, *supra* note 1, at 36.

practice, as an expression of ‘things divine and human,’ as rule and administration, legislation and *oeconomic* disposition.”²¹ For Goodrich, this distinction is critical, and yet, like Agamben, he wants to signal the mediation between the two realms. Encased in that distinction is the promise of a salvation, where the binary coalesces. Part II of this review, “Covered Eyes and Missing Limbs: Goodrich on Emblems,” will work through Goodrich’s iconography of missing sight and limbs and the meaning he draws from it, as influenced by Agamben.

As we enter the world of *Legal Emblems and the Art of Law*, we are introduced to a new and arcane world with Goodrich as our Virgil. There is little sign of other life forms inhabiting the same world as Goodrich, scholars working through early modern emblem books. The study of emblem books is, however, its own discipline and includes an international society with an affiliated journal and Festschrifts for scholars who devoted much of their scholarly lives to the emblem. Indeed, there is enough emblem scholarship that Peter M. Daly’s most recent book on emblems begins with a chapter on “Recent Emblem Theory.”²² Rather than Harold Bloom’s *anxiety of influence*, by which writers refashion their predecessors to make room for their own innovation,²³ Goodrich merely jettisons a whole scholarly field so that his contentions seem, as they might to most legal scholars, a new find and *terra nova* for his active imagination. Perhaps more significant than the absent college of emblem scholars is that, as sharply focused as Goodrich’s writing is, he does not really provide a good grounding in the emblem tradition. He is so invested in the visual that the text is obscured. He refers to the *motto* numerous times but our eyes and our attention are barely drawn away from the visual image. In addition, he does not establish early for his readers that the standard form of the emblem, if not always followed, was structured with a *motto* or title, the image, and then a poem. Goodrich waits until the final page of his final chapter to set out the common emblem structure, a pattern that “puts the rule into action in the form of an image, a composite of picture, motto, and explanatory verse.”²⁴ The generally recognized creator of the emblem book, Andrea Alciato, wrote mottos and poems first, and then his publisher in Augsburg, Heinrich Steyner, arranged for an artist, Jörg Breu, to create the accompanying images. The images in the first edition of 1531 were often sufficiently in conflict with the text that Alciato’s edition of 1534 was printed in Paris with a new printmaker to create entirely new images.²⁵ Alciato may be an

21. *Id.* at 70.

22. PETER M. DALY, THE EMBLEM IN EARLY MODERN EUROPE: CONTRIBUTIONS TO THE THEORY OF THE EMBLEM 13-30 (2014).

23. HAROLD BLOOM, THE ANXIETY OF INFLUENCE: A THEORY OF POETRY (1973).

24. GOODRICH, *supra* note 1, at 245.

25. See John Manning, *A Bibliographic Approach to the Illustrations in Sixteenth-Century Editions of Alciato’s Emblemata*, in ANDREA ALCIATO AND THE EMBLEM TRADITION: ESSAYS IN

unusual case because the results of Steyner's combination of Alciato's text with prints became wildly popular as a genre, but typically the author of the text and the artist of an emblem book would at most work in collaboration. And then we come to the question of how much the emblem book was an especially legal genre. Goodrich is correct to identify many of the emblem authors, such as Andrea Alciato, Barthélemy Aneau, and George Wither, as lawyers. Nevertheless, the emblem books seem to fit the world of broad moral teaching rather than the specifically legal, so among the many pages of emblem books, Goodrich gives us the pages that most center on government and law—we do not, for example, see Cupid stung by bees. In addition, there are a great number of meditative emblem books, some Protestant but many more Jesuit efforts. In Part III, "Missing Forebears: Goodrich and Emblem Studies," I will work through Goodrich and the emblem tradition.

Finally, Goodrich is covering a period from 1531 until 1700, but he waits almost to the end of his book before identifying the period he is covering.²⁶ The period, of course, includes much of the Reformation, the Counter-Reformation's Council of Trent, the reign of Phillip II of Spain, the French Wars of Religion, the Thirty Years' War, and, in England, much of Henry VIII's rule, Elizabeth's rule, and the English Civil Wars—as well as some of the important developments in the history of European colonialism. Except for Goodrich's reading of Anglican and Protestant themes into English emblems, the significant events of the world are mostly invisible. So, too, does Goodrich's narrative show no sign of the vast study of the development of legal and constitutional theory despite repeated references to Bracton and Coke. There is, for example, no hint of the work of Quentin Skinner, J.G.A. Pocock, Brian Tierney, Kenneth Pennington, and the like. That is significant, in part, because Goodrich is committed to a demythologizing project, and he is writing in the context of one of the great mythologies of British constitutional scholarship along the lines of Hallam, Stubbs, and the rest, with only a couple of references to Maitland. I will cover this ahistorical Goodrich in Part IV, "Missing Narratives: Goodrich, History, and Constitutional Scholarship."

Legal Emblems and the Art of Law is an imaginative and provocative undertaking. Even though Goodrich's study is also an act of excision, removing traces of emblem studies, the history of the sixteenth and seventeenth centuries, and constitutional scholarship, Goodrich focuses our attention on a very alien genre. It is a genre full of scribes writing with their feet and ministers with stumps for arms—that is, more akin to Pieter Bruegel the Elder's *Battle of Carnival and Lent*, which was painted a quarter century after the publication of Alciato's first emblem book, than to the lawyer's image of sixteenth- and seventeenth-century studies of

HONOR OF VIRGINIA WOODS CALLAHAN 127-176 (Peter M. Daly, ed., 1989).

26. GOODRICH, *supra* note 1, at 207.

Roman, civil, or common law.

I. PAY NO ATTENTION TO THE LAWYER BEHIND THE CURTAIN

Legal Emblems and the Art of Law continues and expands the project of Goodrich's earlier work, including *Legal Discourse* and *Law in the Courts of Love*, in which he confronts a closed system of law that allows access only to lawyers. Law's mythology is that it is post-mythological, systematic, and scientific. So in each of the three books, as elsewhere in his writing, Goodrich is engaged in opening doors to other realms and urging an interdisciplinary legal understanding. With *Legal Discourse*, he criticizes the linguistics of law and the failure to understand the historical and the social contexts of law. In the essays of *Law in the Courts of Love*, he pushes law into realms of the heart, the senses, the aesthetic, and the literary. And in *Legal Emblems and the Art of Law*, he calls for a visual law. In each case, Goodrich is engaged in an archeology, an uncovering of buried pasts, not to display those varied pasts in museum vitrines but, quite to the contrary, to re-enliven law. And in building his case, Goodrich is after multivalence, or multiple meanings. Not only does he tap new energies for the law, but in each case the result is also the further fracturing of meaning.

Goodrich sets out in *Legal Discourse* to challenge the closed, formalist understanding of the law. He tells us: "Despite the linguistically dubious nature of the assumptions regularly made by formalistic (deductive) theories of adjudication, lawyers and legal theorists have successfully maintained a superb oblivion to the historical and social features of legal language."²⁷ He adds that legal regulation represents "control by means of an archaic, obscure, professionalised and impenetrable language [and] no recognition has been provided of the peculiar and distinctive character of law as specific, socio-linguistically defined, speech community and usage."²⁸ Goodrich's diagnosis is clear: lawyers have created a formalistic model of legal practice that has little to do with the real world and real speech. Indeed, he launches an attack on law-as-writing that we will also see in *The Courts of Love* and *Legal Emblems and the Art of Law*. After explaining the etymology of the word *codex* from a specific medium for writing, a tablet called a *caudex*, he argues that "[t]he connection between writing and law is still an important one and although contemporary uses of the term are considerably more specific and technical than its earliest meanings, the connection is one which bears recollection."²⁹ We have also lost the aid of rhetoric, which in the post-classical era became "an incremental, didactic and largely empty form of study, focused almost

27. GOODRICH, *supra* note 10, at 1.

28. *Id.*

29. *Id.* at 65.

obsessively upon the word and its multifarious role in the figures of speech.”³⁰

As Goodrich looks at various efforts from the discipline of linguistics, they are of little help because they seem perpetually trapped in the Saussurian bipolar *langue/parole* model in which symbols have only an arbitrary relationship to that which is signified by them. So, for example, the French linguist Émile Benveniste in his discourse linguistics, despite the promising formulation, does not loosen the Saussurian grip and fails as a result. Goodrich argues that Benveniste and successive linguists have continued to accept Saussure’s famous *langue/parole* bipolarity and, consequently, in their attempts to overcome Saussure have done little more than an attempt to “invert it in terms of what may be referred to as a ‘linguistics’ of *parole*, variously defined by later linguists in terms of ‘enunciation’, ‘performance’, ‘message’, ‘text’, and so on.”³¹ They remain fundamentally unable to obtain a true historical understanding.³²

In the discourse described by the scholars under critique, Goodrich sees only one defined by its being “context independent in its claims to universality and reason; monologic rather than dialogic, distanced and obscure in the sense of being presented as alien . . . from the commitments and values of the heteroglot social life which is the material context of legal control.”³³ And here he homes in on what he understands is a fear of heteroglossia, a term he draws from his reading of Bakhtin.³⁴ It is against heteroglossia—the mixing of multiple meanings and viewpoints in language—that legal discourse attempts to maintain its hold: “law is in many ways defined as a specialised discipline, precisely by its constant, centripetal, endeavour to maintain itself by differentiation and by exclusion of the discourses and languages which surround it.”³⁵ It is, then, the social, the historical, and indeed the instability of heteroglossia, which he tries to promote. He proposes a turn to a revived rhetoric of law and with it the “re-reading of the law and the rewriting of the legal textbook in the space opened by the concept of law as social discourse” in order that law’s language will be understood “not simply as a discrete logic of intradiscourse but as an accumulation and crystallisation of interdiscursive meanings.”³⁶ In short, Goodrich in 1987 had developed his critique of a formalistic, text-bound jurisprudence that must open itself up to competing meanings and competing disciplines.

30. *Id.* at 103.

31. *Id.* at 136.

32. *Id.*

33. *Id.* at 175.

34. *Id.* at 139-40 (quoting M.M. BAKHTIN, THE DIALOGIC IMAGINATION: FOUR ESSAYS 270 (Michael Holquist, ed., Caryl Emerson & Michael Holquist trans., 1981)).

35. GOODRICH, *supra* note 10, at 175.

36. *Id.* at 208. In pressing for rhetoric, he states: “The enduring value or applicability of rhetoric as a discipline is to be gauged, I would suggest, in exact proportion to its ability to analyse and codify the public dimensions of institutional discursive practice.” *Id.* at 97.

I have mentioned the creation of courts of love in the opening essay of *Law in the Courts of Love* with jurisdiction over matters of love. A court of love is a striking find—and we are generally to understand Goodrich’s peculiar examples as “finds”—establishing the existence of an alternative legal order in which judges were chosen for their aptitude for poetry.³⁷ Indulging his love of lists, Goodrich quickly reminds us of the existence of a broad array of courts that have since been obscured from view: “Even the briefest of lists would include the ecclesiastical courts, civilian courts, courts of conscience, courts of equity, courts of inquisition as well as laws of the sea, of merchants, of forests, of harvests, of circuses, of fairs, of statutes, of women, of aliens, of Jews, of towns, of hundreds, of tithings, of manors, castles and other localities.”³⁸ For him, these courts represent “minor jurisprudences.”³⁹ Indeed, he offers that the common law in England was one of many jurisdictions residing in “a pluralism of laws which reflected the hierarchy and diversity of the sources of knowledge and representations of truth.”⁴⁰

Goodrich is providing us the prehistory of the closing of law. In telling the story of that closing, he identifies the repression of the prevalent pluralism of the law. He tells us that “the doctrinal tradition of common law which developed in the first half of the seventeenth century, was predicated upon an indicative and historically significant repression of precisely those disciplines, knowledges and jurisdictions that constituted not only the plurality of laws but equally the spirit, virtue and meaning of legal judgment.”⁴¹ This establishes the modern condition of law as one of closure. Indeed, the very science of law was “predicated on closure” and it “sought to replace a jurisprudence based upon theocracy, nature or ethics with a secular conception of a self-regulating system of norms or rules.”⁴² Perhaps Goodrich is engaged more in autopsy than diagnosis, for he channels Nietzsche in describing the death of law. Modern law, for him, has “ceased to be of value” and, in fact, “remains as no more than passivity, lethargy or brute repetition: a law or *logos* without *nomos*, namely a law which no longer produces value.”⁴³

Goodrich focuses on exactly those human registers that law has closed off. In doing so, he identifies “the loss of meaning and the repression of sensibility” in that closure and calls for the reconstruction of a discourse “in the languages of fate and destiny, cause and chance, in which they

37. GOODRICH, *supra* note 13, at 1.

38. *Id.* at 3.

39. *Id.* at 2.

40. *Id.* at 10.

41. *Id.*

42. *Id.* at 160.

43. *Id.* at 178. Here Goodrich specifically references Nietzsche and his *Birth of Tragedy*. Goodrich further works his engagement with Nietzsche in his co-edited book, PETER GOODRICH & MARIANA VALVERDE, *NIETZSCHE AND LEGAL THEORY: HALF-WRITTEN LAWS* (2005).

received their classical expression.”⁴⁴ Suggesting what I can describe as an Edenic past, Goodrich argues that the original law was poetry and its very communal character was conveyed by a form of poetics.⁴⁵ For him, modern law is a “literature which denies its literary qualities” and is based on the negation and repression of its own past.⁴⁶ He tells us that “the literary critic engaged with [modern] law must read the literature of law through the evidence of its absence, through its repetitions and through the failures which indicate the return of that which is repressed in law.”⁴⁷ If law has lost its poetry, its rhetorical and hermeneutical past, Goodrich urges a re-education of the senses and a return of the repressed.⁴⁸ As in *Legal Discourse*, that re-education reintroduces a law that is multiform. It lies, as he begins in his listing style, “in a logic of disintegration, in paradoxes and aporia that inevitably accompany the pursuit of similitude, likeness or the ‘semblable’ into the infinite variety or change of circumstances, of persons, places, times and their connections.”⁴⁹

If one thinks that Goodrich has covered enough ground with the variety of the poetic, rhetorical, and hermeneutical, he makes a visual turn in *Legal Emblems and the Art of Law* by engaging with the emblem book, even if, as I will later suggest, he does so largely by repressing the textual within the emblem tradition. In his hyperbolic prose—at once deadly serious and decidedly playful—Goodrich announces, again in his familiar cataloging rhetoric:

I trace this history and trajectory, from Rome to London, from civil to common law, from pictorial to verbal signs, but want here briefly to introduce the project with a grander schema of what, borrowing from our very own and most illustrious Sir Edward Coke, we might term the “visual lines” of law, and in my neologism the visiocracy of justice.⁵⁰

Goodrich tell us—and it is not entirely clear where Augustine ends and Goodrich begins in the sentence—that “[w]e walk, according to St. Augustine, among images; we walk among ephemeral visual perceptions, amidst appearances, variable *personae*, but also we move because of images.”⁵¹ The visual drives us to action and Goodrich finds that special quality in images that can “excite and ignite, generate fear and hilarity, in

44. GOODRICH, *supra* note 13, at 164-65.

45. *Id.* at 128.

46. *Id.* at 112.

47. *Id.* at 113.

48. I am adapting “re-education of the senses” from PETER GAY, *EDUCATION OF THE SENSES (THE BOURGEOIS EXPERIENCE 1)* (1984). In his final essay of *Law and the Courts of Love*, Goodrich produced a critique of critical legal studies in the U.S. He does recognize a “certain passing [interest] due to the power of history” but depicts this as “short-term historical journalism,” and he does this despite the significant critical historical work by Morton Horwitz and many others. GOODRICH, *supra* note 13, at 216.

49. *Id.* at 184.

50. GOODRICH, *supra* note 1, at xviii.

51. *Id.* at 20.

ways that prose generally cannot.”⁵² Goodrich continues by asserting that the poetic quality of the image, which is also capable—and this is key to him—of entertaining.⁵³ Following his *Legal Discourse* and *Law in the Courts of Love*, he sees the image as opening lost registers: “It is this latter sense of vision and of dream, of the unraveling of the past in the present by virtue of the various symbolic and imagistic registers of law, that the humanistic possibilities of dogma come into play.”⁵⁴

If Goodrich focuses again on pluralism over the unitary, he is particularly interested in the fact that the image represents a “*veritas falsa*, a false truth that hides and deceives, if only or not least because it is not what it represents.”⁵⁵ It is from Alciato that Goodrich derived the trope of the *veritas falsa*, which also intrigued Costas Douzinas and Lynda Nead in their introduction to *Law and the Image*:

Controversies about images permeate Western law. Their public and overtly political expression in the iconoclastic disputes reveals not only a deep-seated fear but also an ambiguity as to the use of art and of images more generally. This ambiguity is vividly captured in a famous aphorism by the Renaissance jurist Alciato: *Imago veritas falsa*, the image is a false truth.⁵⁶

But to get to the ambiguity in the image, Goodrich also turns to their enigmatic and finally esoteric valence. Many of the images of the emblem tradition are “hieroglyphs, enigmas of law, esoteric symbols of erudite meanings.”⁵⁷ Repeatedly, he designates them as hieroglyphs, so that he is able to assert that they draw from the late fifteenth-century obsession with the hieroglyph.⁵⁸ This, in fact, is a connection well identified in emblem book scholarship. William Heckscher, art historian, first president of the Society for Emblem Studies, and student of celebrated art historian Erwin Panofsky, has written, for example, of the importance of a “hieroglyphic handbook, Horapollo’s *Hieroglyphica*” — also mentioned a number of times by Goodrich — and identifies the scholar to whom Alciato dedicated his emblem book, Conrad Peutinger, as a “German humanist and student of hieroglyphs.”⁵⁹ As a student of Panofsky, Heckscher was deeply involved in the overall esoteric interests of the Kulturwissenschaftliche Bibliothek Warburg, which were initiated by

52. *Id.*

53. *Id.*

54. *Id.* at 249.

55. *Id.* at 131.

56. COSTA DOUZINAS & LYNDY NEAD, *LAW AND THE IMAGE: THE AUTHORITY OF ART AND THE AESTHETICS OF LAW* 7 (1999).

57. GOODRICH, *supra* note 1, at 20.

58. *Id.* at 50.

59. William Heckscher, *Renaissance Emblems. Observations Suggested by Some Emblem-Books in the Princeton University Library*, 15/2 PRINCETON U. LIBRARY CHRON. 55-68 (1954), reprinted in WILLIAM S. HECKSCHER, *ART AND LITERATURE: STUDIES IN RELATIONSHIP* 114, 115 (Egon Verheyen ed., 1985).

founder Aby Warburg and were carried on after the move from Hamburg to London by a number of scholars, including Frances Yates.⁶⁰

As hieroglyphs, the images of the emblem books easily lend themselves to Goodrich's larger project of highlighting the hidden, the ambiguous, and the multivalent. The humanism of the emblem tradition, he tells us, "opens law to a world of learning, to a plurality of disciplines and the diversity of knowledges," and Goodrich makes this point with his use of "knowledges" decisively in the plural. Moreover, images tie directly to the human core. If Douzinas and Nead tell us that "[a]ccording to [the French legal historian and theorist] Pierre Legendre, images help bind the biological, unconscious, and social parts of the person," they are citing a key influence on Goodrich—indeed, their footnote cites not only Legendre's book, *Dieu au miroir*, but also a chapter from it co-translated by Goodrich.⁶¹ Goodrich does not enter into any prolonged, or even focused, discussion of the relationship between the image and the text, both motto and verse, of the emblem book. Nevertheless, in pressing the enigmatic quality of the image versus the verbal, he can maintain the text as a possible answer to the questions posed by the image: "In being in part incomprehensible – an *aenigma iuris* – the emblem also bifurcates attention in that the encoding of the image draws the focus of the viewer to the words that may explain it."⁶² In the final paragraph of *Legal Emblems and the Art of Law*, he repeats his attack on pure textuality. And there he asserts that reading the emblem book and grappling with its images "requires the reconstruction of a history, literary and aesthetic, verbal and visual, because the two were inseparably intertwined."⁶³ He also praises Didi-Huberman for his depiction of the image's vitality, for understanding the image as "a living and insufflating being."⁶⁴ This in turn allows Goodrich to transition to sacramental language. In the antepenultimate sentence of *Legal Emblems and the Art of Law*, Goodrich acclaims: "In theological terms, the image has to be incarnated, made flesh."⁶⁵ Thus, Goodrich can end with his final two sentences: "This animation of viewer and image, the piercing of the flesh, the getting under the skin that the image and the emblem alike connote can be captured in a final depiction from Quarles's *Scola cordis* [this image with the motto, "The opening of the heart," shows two figures, one winged and haloed, spearing a large heart held aloft by the second.]. It forms a suitable opening, a proper

60. Carl Landauer, *The Survival of the Classics: The German Years of the Warburg Institute* (1984) (Ph.D. thesis, Yale University).

61. DOUZINAS & NEAD, *supra* note 56, at 7, citing PIERRE LEGENDRE, *DIEU AU MIRROIR: ÉTUDE SUR L'INSTITUTION DES IMAGES* (1994); Legendre, *Introduction to the Theory of the Image*, 8/1 L. & CRITIQUE (Peter Goodrich & Alain Pottage trans., 1997).

62. GOODRICH, *supra* note 1, at 253.

63. *Id.* at 263.

64. *Id.* at 264.

65. *Id.* at 264.

envoi.”⁶⁶ With this play on opening, the speared heart thus provides a further opening in Goodrich’s scholarly project. In essence, Goodrich has clearly tapped another source of vitality that had been covered over and obscured by the modern legal profession. It is that vitality that offers itself in the final sentences of *Legal Emblems and the Art of Law*.

II. COVERED EYES AND MISSING LIMBS: GOODRICH ON EMBLEMS

In the first chapter of *Legal Emblems and the Art of Law*, Goodrich introduces a group portrait from around 1568, *Edward VI and the Pope*. (See Figure 2.) The painting depicts the transfer of power from the deceased Henry VIII on his *lit de justice* pointing to a newly anointed Edward VI with his councilors to his side and below him and an image of the Pope—at least as ghostly as Henry VIII—with his head bent both over and sideways, signaling defeat. For Goodrich, the most interesting aspect of the painting, which he analyzed in more detail in an earlier essay, arrives with the various blank rectangles that art historians have generally overlooked or dismissed as unfinished elements.⁶⁷ In describing the series of blank tableaux in the painting, he starts with the top-right image in the window depicting soldiers pulling down idols, and in that window there is one of the blank rectangles.⁶⁸ In his earlier, longer analysis of the painting (published in the book edited by Costas Douzinas and Lynda Nead), Goodrich explains that the blank frames should be understood “as crucial if paradoxical visual representations of the Reformers’ iconoclastic doctrine and direct expressions of the new, imageless or literal form of law.”⁶⁹ In solving the puzzle of the blank spaces, Goodrich offers us a key. In essence, the blank spaces show the potential of future law, law to be written: “The more obvious intimation of the blank space is of the unwritten law, meaning the law yet to be written, as in images of open books with blank pages and unfurled maps with as yet nothing on them.”

⁷⁰ Hinting at an era in which the imagination was caught up in overseas colonization and dream-worlds of *The Tempest*, Goodrich continues: “*Terra incognita* or *terra nullius* is territory not yet claimed, and by the same token the blank page is symbolic of unwritten law and so of pure potential.”⁷¹ The blank tableaux suggest the future colonization of the

66. *Id.* He selects the technical poetic term “envoi,” which is defined by Furniss and Bath as “a short postscript or coda consisting of a stanza which sends the poem about its business by addressing it to its patron or summing up its message,” but it is also an invitation. TOM FURNISS & MICHAEL BATH, *READING POETRY: AN INTRODUCTION* 338-39 (2d ed. 2007).

67. GOODRICH, *supra* note 1, at 33. In his earlier essay, Goodrich places this painting within a more general trend of “blank spaces, unmarked pages, and empty frames” in paintings roughly between 1530 and 1630. Goodrich, *The Iconography of Nothing: Blank Spaces and the Representation of Law in Edward VI and the Pope*, in DOUZINAS & NEAD, *supra* note 56, at 89.

68. GOODRICH, *supra* note 1, at 33.

69. Goodrich, *Iconography of Nothing*, *supra* note 67, at 97.

70. GOODRICH, *supra* note 1, at 35.

71. *Id.*

newly found, but also of the mystery of the unknowable. Thus, Goodrich tells us, “Within the theology of Christian common law, the image of Edward VI is best viewed through its blank spaces, through the very glimpse that the image provides of a beyond of all images, of the sheer power of things unseen, of nothingness.”⁷² Goodrich will tell us of blank pages, open windows, even of books sitting on the ledge of a window, all indicating the transfer point between the human and the unseen. The painting of Edward VI, then, sets us on the course for Goodrich’s analysis of strange images of covered eyes and missing limbs.

When Goodrich turns to images of covered eyes, he is well aware that “[t]he blindfold has done the rounds.”⁷³ Basically, this is not new stuff. He tells us of the medieval blindfold that was analyzed by Christian-Nils Robert, as well as by Judith Resnik and Dennis Curtis, in depictions of condemned prisoners.⁷⁴ It is clear that “[t]he bandage is in these pictures most probably a sign of punishment, a mark of the condemned, and bears connotations that go back to Oedipus, who tore out his eyes in penance for his crimes,”⁷⁵ Oedipus being a common reference point for the negative meaning of blindness. Indeed, Resnik and Curtis, knowing the history of the blindfold as a negative sign used, for example, in images of Synagoga, try to solve the puzzle of why one of the many Justices in the Amsterdam Town Hall was blindfolded while each of the others was sighted.⁷⁶ They rehearse the art historical analyses of the negative connotation of the blindfold, including that of Erwin Panofsky, as well as the positive connotation of the imagery by Cesare Ripa, and conclude that “the Amsterdam Tribunal’s one blindfolded Justice could both be influenced by Ripa and be grounded in the tradition of Synagoga.”⁷⁷ For his own part, Panofsky, in the middle of his famous essay in *Studies in Iconology* on blind cupid set out in a footnote that it was E. von Mueller who had “conclusively dealt” with the blindness of Justice as positive and that its positive connotation of impartiality emerged based on an Egyptian allegory that we received from Plutarch and Diodorus Siculus.⁷⁸ In the same footnote, Panofsky tells us that in “Cesare Ripa’s *Iconologia*, ‘Giustizia’ is the only personification in which the ‘occhi bendati’ bear a favourable implication—in contrast with ‘Ambitione,’ ‘Cupido,’ ‘Cupidità,’ ‘Errore,’ ‘Favore,’ ‘Ira,’ ‘Ignoranza’ and ‘Impeto’—but even here the motif is limited to representations of Worldly Justice, whereas

72. *Id.* at 36.

73. *Id.* at 140.

74. CHRISTIAN-NILS ROBERT, LA JUSTICE: VERTU, COURTISANE ET BOURREAU 80-3 (1993), JUDITH RESNIK & DENNIS CURTIS, REPRESENTING JUSTICE: INVENTION, CONTROVERSY, AND RIGHTS IN CITY-STATES AND DEMOCRATIC COURTROOMS (2011).

75. GOODRICH, *supra* note 1, at 140-41.

76. JUDITH RESNIK & DENNIS CURTIS, *supra* note 74, at 61-71.

77. *Id.* at 71.

78. ERWIN PANOFSKY, STUDIES IN ICONOLOGY: HUMANISTIC THEMES IN THE ART OF THE RENAISSANCE 109 n. 48 (Harper & Row 1962) (1939).

Divine Justice . . . is shown with two heads, one blindfolded, the other seeing.”⁷⁹

Although Goodrich makes a brief reference to blind justice, he is much more concerned with the sightless judge. He starts with a portrait of Bartolus, reproduced in a sixteenth-century collection by Antoine Lafréry, showing the jurist’s eyelids almost entirely covering his eyes. He instructs us: “The primary connotation of such downcast eyes is theological as much as jurisprudential. Lawyers were priests and knowledge of law was expressly an erudition of things divine and human.”⁸⁰ It was because of the jurist’s high honor, mediating the word of God, that he must engage his task with humility. And here we can see that the closed eyes refer back to the blank rectangles of the Edward VI painting—empty tableaux and covered eyes both indicate connection to the unseen. Goodrich here provides the example of Fortescue: “We must judge, according to the fifteenth-century Chief Justice Fortescue, explicitly as *sacerdotes*, ‘with down cast eyes,’ reverently with the appropriate filial fear of the sacred author of laws.”⁸¹ Of course, closed eyes could have a negative value, as in Pierre Coustau’s emblem with the motto, “on perfunctory judges,” where the “endearingly realistic woodcut is of a judge unsighted by sleep.”⁸² We are instructed by Goodrich that the eyes of judges are closed because of the aura of the realm in which they work. Indeed, even where Law and *Justitia* are distinguished, as in an image from the Senneton edition of the *Corpus iuris civilis*, Law is depicted with downcast eyes in contrast with the open eyes of *Justitia*.⁸³

Goodrich then turns to images of *Justitia*, clear-sighted and depicted among blindfolded lawyers. As an example, he describes a woodcut from Barthélemy Aneau’s *Jurisprudentia* in which *Justitia* is a sighted figure proclaiming the law while the lawyers in the woodcut are blindfolded, some of them glancing down, and to further the point, a blindfolded Cupid walks in their midst.⁸⁴ In addition to being sightless – “indeed they hardly appear to be listening” – they seem to be “stumbling around, oblivious to the light, blind and all too human.”⁸⁵ Not a very flattering image of Aneau’s own profession. But Goodrich ventures an interpretation, that “[t]he blindfold on Aneau’s lawyers represents an injunction not to look, not to stare upon the earthly realm, let alone the divinity on high until they

79. *Id.* at 110, no. 48. Cupid, the central figure of Panofsky’s chapter, was always blindfolded and that placed him “on the wrong side of the moral world.” *Id.* at 109. Only a conflation with Renaissance *putti* made Cupid’s blindfold benign. *Id.* at 121. Martin Jay has also analyzed the emergence of “blind justice”: see Martin Jay, *Must Justice be Blind? The Challenge of Images to the Law*, in DOUZINAS & NEAD, *supra* note 75, at 19-35.

80. GOODRICH, *supra* note 1, at 40.

81. *Id.* at 131.

82. *Id.* at 137.

83. *Id.* at 155.

84. *Id.* at 160.

85. *Id.*

are ready, trained, and able.”⁸⁶ For Goodrich, Aneau’s depiction makes the point of lawyers matriculating, and he marshals the comic and the endearing to establish the theological import that it “is only those who have joined the order of the angels” who are ready to “engage with the solemn dictates and divine decrees of the juridical.”⁸⁷ On the final page of his chapter, “The Foolosophy of Justice and the Enigma of Law,” Goodrich suddenly turns on us with an exclamation: “Enough with the juridical hagiography, enough with the political theology that separates transcendent from immanent, the acclamatory from the practical, the eyes from sight.”⁸⁸ But it is essentially a momentary repositioning to allow him to emphasize that we are ultimately talking about the background of our law, of “our common law” —this is real stuff—and to conclude with the importance of his archeological endeavor: “It is only recovery, reworking, returning to images that can allow for invention and novelty, foolosophy as creativity and play.”⁸⁹

Along with the covered and uncovered eyes, Goodrich introduces us to an array of hands—missing and amputated, sometimes bandaged; reaching out; in gesture; and isolated, separated from their owners. Resnik and Curtis, in explaining the amputated hands of Alciato’s *The good Prince in his Counsel* with an image of the prince surrounded by handless ministers—apparently the same woodcut as Aneau’s *The good Prince* offered by Goodrich as discussed below—introduce the theme of the judges of Thebes: “Plutarch reported that in Egypt ‘statues of judges erected at Thebes [had] no hands; and the chief of them had also his eyes closed up, hereby signifying that among them justice was not to be solicited with either bribery or address.’”⁹⁰ And they quote the accompanying poem they found in five major English editions of Alciato and assert that: “nothing is received from them in response to a bribe.”⁹¹ Rather, the prince in the woodcut is unable to see the litigants and hence makes his judgment by what they say. Goodrich also rehearses the reference to the Theban judges and the admonition against bribery, which, for example, he elicits in the context of *The good prince* from Thomas Palmer’s *Two Hundred Poosees*.⁹² And he draws from Christian-Nils Robert’s analysis of handless judges in the Geneva town hall to describe the fresco as “primarily a cautionary representation, in a Calvinist setting, of the evil of injustice.”⁹³ But, clearly, Goodrich is after more than the mundane admonitory.

86. *Id.* at 161.

87. *Id.*

88. *Id.* at 165.

89. *Id.*

90. RESNIK & CURTIS, *supra* note 74, at 43.

91. *Id.*

92. GOODRICH, *supra* note 1, at 170.

93. *Id.* at 172.

In his discussion of hands, Goodrich turns to *chirologia* or the rhetorical art of hand gesture. He is interested in “[t]he theatrical, the mimic world, with its acting out, showing, making visible, and embodying [that] takes priority over words.”⁹⁴ And he instructs us that “it is etymologically the case in that *dicere*, to speak, comes from a root in *digitus*, finger, and so ‘index,’ the sign of something seen, the legitimacy of what the hand viewed and touched.”⁹⁵ Goodrich then floats a preliminary “wild guess” (which is never quite as provisional as the author would have us believe): “So, as a first point, initial hypothesis, wild guess, the image of amputation, of handless judges may be heavily indexical, extremely complex, and irreducibly plural in its significations, but it is to an art of the hand and a tradition of manual eloquence, of visual persuasion, of a gesturing and doing that exceeds words that the emblem points.”⁹⁶ In engaging the art of *chirologia*, Goodrich offers a chart of hand gestures from Bulwer’s *Chirologia, or, the natural language of the hand*.⁹⁷ Again, Goodrich is not solely after the rhetorical faculty of the hand, for he sees wrapped up with the ability to gesture also an access to the truth. “To cut the hands off, to mutilate them,” he tells us, “appears to remove the possibility of knowledge and of truth, as also of eloquence and persuasion.”⁹⁸ Similarly, an odd element of one image reproduced in Goodrich’s book, an isolated hand placed in the corner of the image—in Goodrich’s playful terms, “a lone left hand, a severed appendage, a missing mitt” —“marks the absent divinity and invisible truth that opens the gates of justice.”⁹⁹ For Goodrich it is an indication of the divine source of truth, a “synecdoche of the hidden source of law and justice.”¹⁰⁰

Using the image of the blindfolded prince surrounded by handless counselors in *The good prince* from Aneau’s *Jurisprudentia*, which, for us, will stand in for several images offered by Goodrich of handless counselors, we begin to see the special hierarchy that Goodrich identifies. The counselors “cannot inscribe what the sovereign says.”¹⁰¹ From there, Goodrich can assert: “The councilors, the ecclesiastics, ministers, judges, and lawyers do not make the law. It comes from elsewhere; it comes from God to the sovereign and then, without being touched it is passed on, applied pristine and without addition, emendation, or interpolation.”¹⁰² Perhaps the extreme pictorial formulation is provided by *The prince’s administration* printed in Joannes de Solorzano’s *Emblemata*. The

94. *Id.* at 180.

95. *Id.*

96. *Id.*

97. *Id.* at 204 (Fig. 6.15).

98. *Id.* at 180.

99. *Id.* at 197.

100. *Id.*

101. *Id.* at 190-91.

102. *Id.* at 191.

woodcut shows a prince sitting on his throne, scepter in hand, with his robe populated by an array of eyes, ears, and hands, almost a peacock's tail of eyes, ears, and hands. (*See Figure 3.*) In his playful mode, Goodrich suggests: "It helps to remember that to administrate comes from *minus*, and means to be less, to have inferior standing, and here to be missing your hands."¹⁰³ This, then, is the perfect image of the formulation that Goodrich quotes repeatedly: "The sovereign rules, he does not govern."

Goodrich is, indeed, fond of setting out the rule/administration binary opposition. The legal emblem tradition itself, from what we have seen, so often captures in its ideology the difference between rule and administration by its marshaling of ocular and manual images. As mentioned above, Goodrich set out that "[t]he legal emblem is most simply the legitimate image of law as a mixed knowledge and practice, as an expression of 'things divine and human,' as rule and administration, legislation and *oeconomic* dispensation."¹⁰⁴ And in this he turns to Giorgio Agamben. As Goodrich sets out in his essay, "Specters of Law," "Agamben's thesis develops from the seventeenth-century maxim *rex regnat sed non gubernat*, the sovereign rules but does not govern."¹⁰⁵ And Goodrich explains further:

The maxim refers to a distinction taken from theology between two modes of divinity and two orders of being, one perfect and inactive, a pure being that theologians discussed in terms of an idle God (*Deus otiosus*), and a useless King (*rex inutilis*) as opposed to an active God (*Deus actuosus*) and a realm of administrative practices, also termed economic management, meaning household governance or *oikonomic* disposition.¹⁰⁶

If the various depictions of the prince with his counselors in Goodrich's emblem study embody this split between divine law and administration, Goodrich repeatedly talks both of the distinction and the mediation between the earthly and the otherworldly. In one image, he identifies two kings or rather "a curious doubling because we see the king twice: one time, in the background and at distance, praying in the inset picture, and then a second time as a part object, a heart and hieroglyphic crown."¹⁰⁷ We, then, move from the *tellurian* or earthly to the celestial.

Decoding the empty throne, as pictured in "They reveal the man" from Juan de Borja's *Empresas morales*, Goodrich states that the "empty chair, like the blank tableau and the white page, signifies in coded form much more than can be seen."¹⁰⁸ And here he turns again to Agamben, who has "developed this point at length with reference to the theology of

103. *Id.* at 193.

104. *Id.* at 70.

105. Goodrich, *supra* note 16, at 773, 793-94.

106. *Id.* at 794.

107. GOODRICH, *supra* note 1, at 109.

108. *Id.* at 94.

administrative disposition, which he terms *oikonomia*, and he usefully traces the doctrinal significance of the throne in the Old Testament and the Psalms.”¹⁰⁹ In fact, we are told, that Agamben finds the archetype of power in the *empty seat of power* and that the “seat is pure *potentia*, it is the latency and promise of justice to come”—even though Goodrich then makes an aside to note that the Anglican approach may not be quite as strong as the depiction by the Italian philosopher.

In Goodrich’s understanding of the move from image to invisibility, he also turns to Agamben: “The glory of God is expressed, as I am fond of quoting, ‘in a crescendo of optical images’.”¹¹⁰ Indeed, Goodrich does seem to relish “crescendos of optical images,” which becomes a recurring motif in his book. Certainly, for Agamben, the focus is on the Glory when time and all activity stop. In fact, in an evocative passage, Agamben observes Aquinas making:

a sudden digression to ask if the hierarchies and orders of angels will remain even after the Day of Judgment. The question is by no means to be taken for granted nor is it avoidable. Indeed, once the history of the world and its creatures has reached its end and the elect, as well as the damned, have received either eternal bliss or eternal punishment, what is the purpose of the existence of the orders of angels? How can we imagine inoperative angels?¹¹¹

With all of Goodrich’s fondness for optical crescendos, he certainly references Agamben’s eschatology with the thematic of “inoperativity” that is so critical to Agamben’s work as a whole.¹¹²

In his turn to theological analysis, Goodrich is particularly invested in the sacramental aspect of the emblem tradition with his repeated references to the word made flesh.¹¹³ The emblem, he instructs us, “embodies a certain set of impossibilities that derive their form from the paradox of body and soul.”¹¹⁴ He adds that it is important to acknowledge that the emblem represents:

a radical and frequently satirical form, and specifically in the context of common law, it is a foreign invention, an aspect of the *mos britannicus*, of a reformed Roman law of the visible brought to England and there used to show the common lawyers the deeper and civilian structure of what they see.¹¹⁵

In essence, it offers a bridge not only to the Continent but also to an

109. *Id.* at 94-5.

110. *Id.* at 96.

111. AGAMBEN, *supra* note 19, at 159.

112. See SERGEI PROZOROV, AGAMBEN AND POLITICS: A CRITICAL INTRODUCTION (2014) (using “inoperative” in the subtitle of every chapter after the first, such as chapter 2, “The Sabbatical Animal: The Politics of Inoperativity”).

113. He also references this earlier in GOODRICH, *supra* note 13, at 134.

114. GOODRICH, *supra* note 1, at 245.

115. *Id.*

unseen that the Continental lawyers see. *Legal Emblems and the Art of Law* continues and extends Goodrich's overall project by delving deeply into the visual within the emblem tradition. Of course, the woodcuts and other images examined in his book are hardly just that. For Goodrich, the period of the emblem book represents "the instant of [legal regulation's] visualisation leading us to the humanistic register and interdisciplinary archive, the figurative lexicon of rule."¹¹⁶ Goodrich, never content, sees it also going well beyond the figurative arts, so emblems also have "choral glamor."¹¹⁷ Moreover, they represent "the inaugural didactic and theatrical mode of manifestation, the carefully wrought staging of the performance of justice."¹¹⁸ With all of his discussion of *Justitia* and princes on stages or on *pegma*, a mechanical device to raise or lower actors to the stage, we should have seen that coming. That is not to say he is alone in focusing on the theatrical in the emblem book. One of the important scholars of the emblem, Michael Bath, in his *Speaking Pictures* talks about the "tendency of books, including several notable emblem books, to describe themselves as 'theaters'."¹¹⁹ Addressing Renaissance culture more broadly, the world of Stephen Greenblatt's *Renaissance Self-Fashioning* is fundamentally theatrical, so that his Thomas More is very much fashioning himself within a pageant and Henry VIII is an elaborately costumed stage presence.¹²⁰ Goodrich's turn to the choral and theatrical is, however, all part of the Goodrichean archeology to recover the past vibrancy and, ultimately, the glory of the law. But there are catches. The image suggests popularity; it is, he tells us "populist in scope."¹²¹ That, however, is illusory at best: "The image – the vision – can be relatively easily seen but what is apprehended leads rapidly from the intelligible, from the readily visible and apprehensible to the opaque matter, the Latin and other symbols of faith and law."¹²² In a sense, there are border guards for this realm as well, for the emblem book involved "an esoteric form of knowledge, one that the lawyers, the legally learned, believed could harm the uninitiated."¹²³ Despite Goodrich's urge for the return of the repressed, there is a sense in which, as he says elsewhere as well, some of

116. *Id.* at 249.

117. *Id.* at 247.

118. *Id.* There is certainly reason to acknowledge the interaction and overlap of art forms. Peter M. Daly devoted a chapter in his *Literature in the Light of the Emblem* to "Emblematic Drama." PETER M. DALY, *LITERATURE IN THE LIGHT OF THE EMBLEM: STRUCTURAL PARALLELS BETWEEN THE EMBLEM AND LITERATURE IN THE SIXTEENTH AND SEVENTEENTH CENTURIES* 153-186 (2d ed. 1998). He there references both Walter Benjamin and Albrecht Schöne's respective works on baroque drama. *Id.* at 153.

119. MICHAEL BATH, *SPEAKING PICTURES: ENGLISH EMBLEM BOOKS AND RENAISSANCE CULTURE* 122 (1994).

120. STEPHEN GREENBLATT, *RENAISSANCE SELF-FASHIONING: FROM MORE TO SHAKESPEARE* (1980).

121. GOODRICH, *supra* note 1, at 252.

122. *Id.*

123. *Id.* at 42.

the mythos of the past has stuck to the present, so he can assert: “Ours, our common law, is one that still silently and often unwittingly manifests a belief in its own theogonic legitimacy, one that portrays in words the affect and effect of the indefinite time of the most antiquated and oldest of laws, of rules supposedly nascent beyond the memory of humanity.”¹²⁴ He simultaneously summons the past for the rejuvenation of law and sees the mythos of the past also tied to the mythos of the present, the legal profession’s self-mythologizing by using incantations and mystery to enhance the lawyer’s hold on legal administration – all those Latin and law French terms that he has told us represent an esoteric cloaking of specialized knowledge. Goodrich works to revive the theatricality of the past, but he is quite cognizant of the theatricality of the contemporary lawyer’s self-fashioning.

III. MISSING FOREBEARS: GOODRICH AND EMBLEM STUDIES

Well into *Legal Emblems and the Art of Law*, Goodrich first asserts with regard to Alciato’s emblem book: “The point to stress is that the most popular law book ever written, outside of the *Corpus Iuris*, and Gaius’ *Institutes*, expressly arrived on the juristic stage *genus jocosum*, as a satirical, at times obscene work of moralizing precepts aimed to inform, instruct, and amuse those learned in law and the arts.”¹²⁵ And then he adds nonchalantly: “The story is well enough known.” In a footnote on the page he references two studies of Alciato, but these are among the very few references to the scholarship of the emblem, which has become its own industry. Indeed, emblem studies include an international society and an English-language journal, *Emblematica: An Interdisciplinary Journal for Emblem Studies*. In addition, there are numerous digitization projects by various universities and libraries making emblem books available online.¹²⁶ The Glasgow University Emblem Website, one of the more ambitious, provides access to 22 editions in different languages just of Alciato’s emblem book in addition to an array of other emblem books. Peter M. Daly recently estimated that “in the two decades 1990-2009 over 1,400 articles, essays, and books were published in western European languages on emblem studies.”¹²⁷ And the scholarly examination of the emblem tradition is hardly new. In the beginning of *The Emblem in Early Modern Europe*, Daly states: “The last 150 years have seen many discussions of emblem theory,” and he names the most prominent scholars, “Henry Green, Mario Praz, Robert Clements, Rosemary Freeman, William Heckscher, Karl-August Wirth, Albrecht Schöne,

124. *Id.* at 165.

125. *Id.* at 143.

126. For the Society for Emblem Studies’ digitization webpage with a links to various projects: <http://www.emblemstudies.org/digitisation-projects/>.

127. DALY, *supra* note 22, at 2.

Dietrich Walter Jöns, John Manning – the list could easily be extended.”¹²⁸ Some of these names – like that of Mario Praz, who was especially renowned for *The Romantic Agony* on the Romantic movement and the erotic sensibility—were not simply names in an isolated world of emblem scholarship. Even contemporaneous with the creation of emblems in the sixteenth and seventeenth centuries, there were those, only starting with Claude Mignault with his prefaces to Alciato, who produced theoretical writings on the emblem, so that Michael Bath could devote a chapter of his *Speaking Pictures* to “The Philosophy of Symbols,” meaning the contemporaneous philosophy.¹²⁹ If Goodrich does reference Mignault, there is no sense of an ongoing set of writings on the emblem book. The emblem was at its own time, as it is now, a subject of substantial and serious focus, if it remains a bit of a specialty.

The scholarship on the emblem is so large because of the enormity and cultural reach of the subject. In *The King's Two Bodies* in 1957, Ernst Kantorowicz ventured that, following Alciato's first book, “some 1300 authors published more than 3000 similar emblem books, while Alciati's original work was translated into all European languages.”¹³⁰ William Heckscher referred to Alciato's book as being “destined to become the ancestor of an almost limitless progeny.”¹³¹ Daly recently estimated that there are “6,500 books of emblems and *imprese*, not all illustrated, printed between 1531 and last year.”¹³² Of course, the definitional lines are contested, that is, what counts and does not count as an emblem book. Goodrich, with his hyperfocus on the visual (even if he occasionally references the visuality of written text as he does in his conclusion), would not count the unillustrated books within his subject-matter. But the emblem book represents a very broad phenomenon addressed from inexhaustible interdisciplinary angles. Again, the border between the emblem genre and many other facets of Renaissance culture was porous. As Heckscher noted, “The Renaissance emblems were not born in full panoply.”¹³³ Goodrich is well aware of this and tells, for example, of the emblem's background in heraldic devise. Nevertheless, it is not just that the emblematisers had forebears, but that they also drew from a wide cultural range, so that Michael Bath adopts a term favored by deconstructionists, *bricolage*, to describe the emblematisers as tinkerers making use of a wide range of found parts.¹³⁴ Similarly, the emblem genre seemed to reach into all corners, so that Michael Bath would tell us of the

128. *Id.* at 1.

129. BATH, *supra* note 119, at 130-159.

130. ERNST H. KANTOROWICZ, *THE KING'S TWO BODIES: A STUDY IN MEDIEVAL POLITICAL THEOLOGY* 174 (1957).

131. HECKSCHER, *supra* note 59, at 114.

132. DALY, *supra* note 22, at 4.

133. HECKSCHER, *supra* note 59, at 114.

134. BATH, *supra* note 119, at 106.

wide use of emblems in the applied arts, their use in walls, windows, and ceilings, such as the emblems that made their way from printed books to the ceiling of Blickling Hall's long gallery in Norfolk.¹³⁵ In this mode, Daly finds that the emblem had made its way into the material culture of Renaissance halls and ceilings.¹³⁶

Returning to the work of the first emblemist, Alciato's books, by themselves, provide an enormous terrain. Resnik and Curtis mention that Alciato's "1531 treatise, an anthology of a diverse collection of moralizing short poems or epigrams to which his publisher added illustrations, was reproduced in some 150 editions."¹³⁷ To be sure, Goodrich is hardly ignorant about the number of editions or their variation, but I only saw one reference to an illustrational change reflected in the book's publication history; he tells us that a Janus-faced image of justice and law is used in Alciato's book, "the first such use being in a 1546 Venetian printing."¹³⁸ The variations among the long timeline of Alciato editions is never foregrounded, nothing like the chart of seven emblems in four different editions that crosses two pages of Panofsky's *Studies in Iconology* as a large footnote setting out the changes in whether Cupid is shown blind or not.¹³⁹ And there is Heckscher's story of going to the reading room of Princeton's Rare Book Department during a Christmas party, only to wake up to see a copy of the Roville-Lyon edition of Alciato that had recently been left for him, and there he noticed the reversal of two words, which changed the sense of the first line of the epigram, and he was then able to trace that change from a particular edition to other editions following it.¹⁴⁰ Heckscher's tale is charming, but the comparison of changes among editions is a staple of the work done by scholars of the emblem book.¹⁴¹

Significantly, Goodrich also does not suggest the number of emblems in various emblem books. One has little idea that emblem books typically included well over 100 emblems. Indeed, scholars will focus on the structure or ordering of the symbols, the fact that Francis Quarles's *Emblemes* – an important source for Goodrich because Quarles was a lawyer – was divided by subject matter into five books with certain emblems providing transitions from one subject to the next.¹⁴² Even the emblems of Alciato's book, Bath instructs us, were restructured by the Lyons publishers of his book in 1548 so that they fit into specific topics,

135. *Id.* at 12.

136. DALY, *supra* note 22, at 5.

137. RESNIK & CURTIS, *supra* note 74, at 43.

138. GOODRICH, *supra* note 1, at 72.

139. PANOFSKY, *supra* note 77, at 122-23 n. 73.

140. Heckscher, *Pearls from a Dunghheap: Andrea Alciati's "Offensive" Emblem, "Adversus naturam peccantes," supra* note 59, at 481, 484.

141. As another example, Egon Verheyen traces a change in the depiction of Prometheus to the influence of Michelangelo. Egon Verheyen, *Alciato's Hercules, Emblem (No. 138) and Related Scenes: Questions of Interpretation*, DALY, *supra* note 25, at 47, 48.

142. BATH, *supra* note 119, at 213-14.

like God, Love, Fortune, Peace, Science, Honor, Prudence, and Hostility.¹⁴³ Yet, with an exception or two regarding a short sequence of images, we have little sense of the broad sequencing of emblems in Goodrich's emblem books—or even that the books had so many images. Besides our seeing Goodrich's selectiveness about which images he chooses for focus, we do not have a sense of how the books are put together and that the order of the emblems may mean something.¹⁴⁴

If we move from the book to the specific emblems, we find that Goodrich's focus is very much on the images and their visual power; the texts may be referenced but the interaction between text and image is of secondary, perhaps tertiary, interest to him. He does, of course, make references to the interaction of image and text. For example, in his discussion of the empty chair, he asserts: "Thus the motto for emblems of this empty civil stage was often precisely concerned with the unseen, spiritual qualities that the emptiness connotes, as in *clarae virtutis honores*, meaning the glorious honors of virtue, or more indirectly *meliora latent*, the best things lie hidden."¹⁴⁵ And he may speak to the import of a motto, as he does when he points out that two emblems before the emblem with the multiple hands, eyes, and ears is an image of the donkey seated on a throne with the motto, "Against Sovereigns who choose inept judges."¹⁴⁶ I believe it is only on the final page of his final chapter that he talks to the standard tripartite motto-image-verse structure of the emblem when he asserts: "The picture is the person (*imago*), the motto is a thing (the Latin epigram as *res* and *maiestas*), and the verse is to be understood as the embodiment of the action, meaning as insertion, as putting into circulation, both promulgating and enacting."¹⁴⁷ And it is there to draw an analogy from the famous person-thing-action division of Roman law.

In his recent book, Daly explains that although it is common to refer to the three elements as motto, image, and epigram or some close variation, he prefers to follow Albrecht Schöne in the use of *inscriptio*, *pictura* and *subscriptio* "because they imply nothing about the form or function of the part in question."¹⁴⁸ Their function may vary, so, for example, "many emblems have a title and not a motto" and "not every *subscriptio* is an epigram."¹⁴⁹ The scholars have focused a good deal on the interaction among the parts. Heckscher in the important extended article he wrote with Karl-August Wirth in the 1950s, suggested that the epigram should solve, or at least help to solve—"wenigstens seine Auflösung zu

143. *Id.* at 33.

144. Goodrich does refer, but this is rare, to an interpretation being "supported strongly by the surrounding emblems." GOODRICH, *supra* note 1, at 194.

145. GOODRICH, *supra* note 1, at 94.

146. *Id.* at 194.

147. *Id.* at 245.

148. DALY, *supra* note 22, at 3.

149. *Id.*

erleichtern”—the riddle presented by the motto and the picture, with the emphasis on help because Heckscher and Wirth go on to emphasize that it is likely to involve deeper analysis of the form of both the poetry and the art.¹⁵⁰

Not all emblems were composed of the three standard elements. Furthermore, their relationship is complicated by the fact that the text and the images were usually created by different people, and, as Daly observes, the “creator” is “something of an ambiguity since most texts were written by someone recognized on the printed title-page as the author, but he or she rarely produced the *pictura*.”¹⁵¹ Indeed, to return to the originator of the emblem book, it has become clear that he wrote the epigrams and that Heinrich Steyner, his publisher in Augsburg, chose the illustrator to add the images for Alciato’s first edition. Michael Bath is among many who wonder whether Alciato even “intended or anticipated the three-part structure of motto-picture-epigram which was to become definitive.”¹⁵² John Manning, in fact, has worked through a narrative of the early editions of Alciato’s emblem book. As mentioned earlier, Steyner commissioned woodcuts by Jörg Breu, and the inconsistencies between text and image tell the story, including a cupid holding flowers instead of the garlands mentioned in the text. Christian Wechsel offered to have a new edition with new prints published in Paris. As John Manning tells the story, even the first Paris edition had to be revised to get the elements of the cupid emblem right.¹⁵³ That was the story in Alciato’s case, and we find that other authors had problems with images created for their books, so, for example, George Wither even wrote a verse to express his dissatisfaction with the frontispiece of his *Collection of Emblemes*—the same frontispiece that appears prominently in Goodrich’s book without reference to this dispute.¹⁵⁴ Then there are the large number of emblem books that took their images from earlier emblem books and added new texts, so that the image was a found object and not original to the text.¹⁵⁵ In reading *Legal Emblems and the Art of Law*, one rarely has a sense of the disjuncture between the creation of the texts and the images. But Goodrich would love to repeat the instruction, based on a Plutarchian quotation about poetry offering a “speaking picture” and painting offering

150. William S. Heckscher & Karl-August Wirth, *Emblem, Emblembuch*, 5 REALLEXIKON ZUR DEUTSCHEN KUNSTGESCHICHTE 85, 93 (1959). Heckscher was quite interested in the puzzle, which he shared with Panofsky. In fact, Heckscher told me that Panofsky used to call him “Archie” after Nero Wolfe’s sidekick in Rex Stout’s mystery novels. See Landauer, *supra* note 60, at 227.

151. DALY, *supra* note 22, at 3.

152. Michael Bath, *Honey and Gall or: Cupid and the Bees. A Case of Iconographic Slippage*, DALY, *supra* note 25, at 59, 60.

153. John Manning, *A Bibliographical Approach to the Illustrations in Sixteenth-Century Editions of Alciato’s Emblemata*, DALY, *supra* note 25, at 127, 129-133.

154. BATH, *supra* note 119, at 111.

155. Rosemary Freeman gives us the example of George Wither’s *A Collection of Emblemes*, published in 1635, reusing the plates of Gabriel Rollenhagen’s *Nucleus Emblematum Selectissimorum*. ROSEMARY FREEMAN, *ENGLISH EMBLEM BOOKS* 10 (1948).

“dumb poetry” from Simonides of Ceos, crafted by Henry Hawkins for his English translation of a French book of emblems: “If you eye wel and marke these silent Poesies, give eare to these speaking pictures.”¹⁵⁶

As I have stated above, Goodrich sees the emblem tradition as originally and essentially legal in nature. Perhaps his strongest statement to that effect is his assertion: “Be that as it may, the emblem book tradition, the *mens emblematica* or pictorial turn in early modern administration, was a fundamentally legal invention.”¹⁵⁷

Scanning literature on the emblem book, much of it seems quite remote from law. In her overview of the English emblem, Rosemary Freeman tells us that “[t]he Elizabethan love for emblems and for allegory in all its forms can, no doubt, be attributed in part to an unreflecting acceptance of mere fashion: emblem writing was a gentlemanly accomplishment of the same type as the ability to play the lute or to dance the lavolta.”¹⁵⁸ This breathes more the air of Castiglione—without the courtier’s role in a social covenant—than that of Coke. And Freeman adds: “If it was one of the normal accomplishments of a courtier, it was also one of the normal devices of a poet. In the reign of Elizabeth emblems were so well established as a part of social life that they slid everywhere into literature.”¹⁵⁹ If William Heckscher offers that “[t]here is hardly a moral or amatory emblem-book which does not have a picture of a moth (or moths) attracted by the flame of a candle under mottoes such as ‘For one Pleasure a thousand paynes,’”¹⁶⁰ Presumably, Goodrich would claim both the moral and the amatory as provinces of law.

Although it is clear that a wide range of non-lawyers were occupied with the emblem book, it may be worth returning to Alciato as the originator to determine how much his emblem book was legally driven, for it remains the case that he dedicated his emblem book to the humanist Conrad Peutinger, “from one poet to another,” not “from one jurist to another,” and both were close to Erasmus. Peggy Muñoz Simonds took on the task in the 1980s of writing on “Alciati’s Two Venuses as Letter and Spirit of the Law.”¹⁶¹ To start off, it says something that she felt she had to make the case for Alciato as a legal thinker. She argues that Alciato was a “provocative thinker in the mode of Renaissance Platonism,” whose “primary interests were philology, rhetoric, problems of translation, and the workings of metaphor.”¹⁶² Nevertheless, she reminds us that “his major professional concern was with the interpretation of texts—

156. *Id.* at 14.

157. GOODRICH, *supra* note 1, at 54.

158. FREEMAN, *supra* note 155, at 3.

159. *Id.* at 5.

160. Heckscher, *supra* note 59, at 118.

161. Peggy Muñoz Simonds, *Alciati’s Two Venuses as Letter and Spirit of the Law*, DALY, *supra* note 25, at 95-125.

162. *Id.* at 98.

specifically of the legal texts which form Justinian's *Corpus iuris*."¹⁶³ She specifically points out Alciato's emblem 186 added in 1546, which shows that the "lawyer's vital interest in teaching his readers to see through the letter of a text or through the body of law (*Corpus iuris*) to the hidden spirit or meaning within is stated directly by the emblem's *inscriptio* from St. Paul, II Cor. 3:6, 'Littera occidit spiritus vivificat' [The letter kills, the spirit gives life]."¹⁶⁴ She is clearly singing in Goodrich's chorus. And, in reference to Athena, Simonds convinces that "Alciati's reader is expected to know as well the importance of the goddess as the founder of the Aeropagus, the first law court in Athens."¹⁶⁵ But then she goes on to the two Venuses, and her way to bring the Heavenly Venus to law is via Plato: "For Plato, Beauty is in turn analogous to Goodness, Truth, and finally to Justice."¹⁶⁶ Taking her argument, it is still the case that not every element of Alciato's mind was captured by law. If she says that Alciato's primary interests were "philology, rhetoric, problems of translation, and the workings of metaphor," does that mean that those interests were marshaled primarily in the service of law? And focusing on Alciato himself does not tell us much about the woodcutters and engravers of the emblem images, the very images that are at the core of Goodrich's book. Again, looking through the vast array of images in the emblem books, even those whose authors were lawyers, is there always a legal meaning, a legal hook?

How, then, do we explain the absence, in fact an astonishing absence, of the existing emblem scholarship in Goodrich's book? Goodrich has set a distinct mood in *Legal Emblems in the Art of Law*. Starting with the armless scribe in his preface and even the heart with eyes and ears floating over a city chosen for the book's cover, it is clear that he wants his readers to feel that they are in a strange world quite alien to their own. And part of the mystery of this world is that he is bringing it to us essentially unmediated, that is, without the interference of scores or hundreds of scholars of the emblem book. He can count on many of his readers, at least those among modern lawyers and legal scholars, not having been introduced to this world. Indeed, even Bath opened his *Speaking Pictures* by offering that when Rosemary Freeman wrote her pioneering study on the English emblem book in 1940, she "assumed no prior knowledge of what was then, and to some extent still remains, a largely unknown corpus."¹⁶⁷ Goodrich counts on our identifying the emblem book as priestly knowledge, and he is largely correct, although that effect might be dispelled were he to introduce the large body of scholarship, if highly

163. *Id.*

164. *Id.* at 99.

165. *Id.* at 100.

166. *Id.* at 101.

167. BATH, *supra* note 119, at 1.

specialized, that has been devoted to the emblem book. In short, Goodrich's narrative of disembodied hands involves a sleight of hand. He wants his reader to identify this strange new world of curious images as his discovery, a find that, like the Courts of Love, he can draw to our attention and place in his context. But this move – his refusal to acknowledge the existing *Baedeker* guidebooks – allows Goodrich to recharacterize the emblem book as primarily a legal vehicle. For him, he Alciatos, the Withers, and the Quarleses were not lawyers working in a broad humanistic enterprise where legal themes find their place within a range of moral, aesthetic, and religious themes, but lawyers working in a fundamentally legal enterprise where all themes, in the end, are legal.

IV. MISSING NARRATIVES: GOODRICH, HISTORY, AND CONSTITUTIONAL SCHOLARSHIP

I have mentioned that *Legal Emblems and the Art of Law* covers the period from 1531 until 1700 and that the period, in turn, includes enormously important developments in European and, more specifically, English history. The period includes most of the developments of the Reformation as well as the Counter-Reformation, including the creation of most of the Reform movements, such as Calvinism (Calvin's *Institutes* being published in 1536), and Counter-Reformation events, such as the Council of Trent and the growth of the Society of Jesus. It includes the Thirty Years' War that engulfed much of Europe, the reign of Phillip II in Spain and its broad impact; both the Edict of Nantes by Henry IV in 1598, granting tolerance to French Huguenots, and its revocation in 1685 by Louis XIV, not to mention the reign of Louis XIV and the development of French mercantilism; untold numbers of events in Italy, including the Habsburg-Valois wars; the creation of the Dutch Republic; and the reign of Henry VIII and Elizabeth I in England, as well as the English Civil Wars. In addition, it represents a period of major colonial development by various European states. This list may appear to identify the standard markers of the traditional introductory textbook. Nevertheless, it is important to understand that almost none of those worldly developments appear in Goodrich's book. The main exception is, of course, his use of *Edward VI and the Pope* and his talk of a "bloated and dying King Henry VIII, propped up in bed and pointing past his son Edward VI to his councilors."¹⁶⁸ Positioned below Edward is "the pope, his head bowed under the weight of the Holy Scriptures."¹⁶⁹ Interestingly, Goodrich does not even indicate that the painting was created after Edward's reign – that is simply not important to him. He does identify the painting as "a much commented and juridically significant representation of the visible transfer

168. GOODRICH, *supra* note 1, at 30.

169. *Id.*

of power.”¹⁷⁰ But Goodrich here is not as explicit about the historical context as he is in his essay, “The Iconography of Nothing,” where he states: “The context of the painting is a common law that, through the English Reformation and the Henrician Act of Supremacy, had arrogated the spiritual jurisdiction and its courts of conscience to the Crown.”¹⁷¹

The key to what Goodrich is doing may be provided by his repeated references to the “longue durée.” Initially, I thought this was one of his clever turns of a phrase, playing with a term of art artistically out of context. It soon became clear, however, that he meant to use the term decidedly in its original sense as made famous by the French Annales School of historians that had been founded by Marc Bloch and Lucien Febvre before the Second World War. Fernand Braudel inaugurated the use of the term in a famous article, “Histoire et Sciences sociales. La longue durée,” which he published in 1958 in the school’s journal.¹⁷² Braudel and other historians of the group, including Emmanuel Le Roy Ladurie and Jacques Le Goff, were very clear that historians would be advised not to focus on traditional political events—*événements*—like much of my list above but, rather, on deep social structures viewed over a much longer time-horizon. In the introduction to *Legal Emblems and the Art of Law*, Goodrich refers to his “embarking on the recollection and elaboration of the *longue durée* of legal images.”¹⁷³ He is perhaps more explicit about his use of the term in *Law and the Courts of Love*, where he states: “The transmission of law, its passage over the *longue durée* or indefinite time of institutional structures is a matter of the communication or passing on of the dignities, places, roles and other sites of subjectivity, of the *personae* or identities of historical being.”¹⁷⁴

Putting aside the *annus mirabilis* of 1531 in Goodrich’s narrative, what is important to him is reflected by his constant references to “Anglican” and “reformed” throughout *Legal Emblems and the Art of Law*. He is deeply interested in the ideological move from the Continent to England as reflected in his references to “classical Anglican maxims,” “classical Anglican terminologies,” “Anglican answers,”¹⁷⁵ and the like; the reference to “classical” is again to suggest that this approach was carried over a long period and may remain with us today. References to “reformed” similarly populate his book. In essence, he is interested in setting out a way of seeing things, a mental framework – in *annalyste* terms, a *mentalité* – from the English Anglican, reformist perspective,

170. *Id.*

171. Goodrich, *The Iconography of Nothing*, *supra* note 67, at 100. In that essay, he also provides more specific historical context for the painting, via the scholarship of Margaret Aston, as an admonition to Queen Elizabeth. *Id.* at 94.

172. Fernand Braudel, *Histoire et Sciences sociales. La longue durée*, 13/4 ANNALES. HISTOIRE, SCIENCES 725 (1958).

173. GOODRICH, *supra* note 1, at 8.

174. GOODRICH, *supra* note 13, at 140-41.

175. For examples, see GOODRICH, *supra* note 1, at 52, 80, 85, 94, 95, 102, 214, 215.

which, however, does not make much room for the seventeenth-century Anglican/Puritan divide, in part because he is after the *longue durée* rather than regicide and the catastrophic, even to the point of not fitting his authors into their various political and religious factions, not identifying, for example, which were Royalist and which Puritan.

If Goodrich appropriates the *longue durée* of the Annales School, he shows no visible trace of the immense constitutional and legal historical literature of both Europe generally and England specifically, including the work of scholars of the likes of Quentin Skinner, J.G.A. Pocock, Brian Tierney, Robert L. Benson, Walter Ullmann, Kenneth Pennington, and Alan Cromartie, each of whom traces the development of political and constitutional ideas. And here I thought it worth delving very briefly and selectively into a work by each of Tierney, Pennington, and Skinner to suggest a part of the missing background of Goodrich's *Legal Emblems and the Art of Law*. Goodrich has engaged us in a narrative in which the common law and English reformist thought are closely tied—loud denials of the English reformers aside—to the Continent and to Roman law, civil law, and Catholic sources. Despite Goodrich's reference to “our very own and most illustrious Sir Edward Coke”¹⁷⁶ as well as possessive references to other English legal luminaries from Bracton to Blackstone, Goodrich does not make it easy to follow his tracing of Continental influences on English legal thought nor even make it clear when a particular author of an emblem book is English or Continental. In short, his book could have made use of the constitutional and legal narratives provided by scholars working along the lines of Tierney, Pennington, or Skinner.

To start with Brian Tierney's *Religion, Law and the Growth of Constitutional Thought 1150-1650*, it sets out to argue that we can only possibly understand the growth of Western constitutional thought if “we consider constantly, side by side, ecclesiology and political theory” and if “we consider the whole period from 1150 to 1650 as a single era of essentially continuous development.”¹⁷⁷ Tierney, like the other two historians in my sample, is hardly engaged in a discussion of *événements*. He starts his narrative with Roman and canon lawyers of the twelfth century. He is interested in telling the story of canonist thought “where religious and secular ideas most obviously intersected” and, ultimately for him, “formed a kind of seedbed from which grew the tangled forest of early modern constitutional thought.”¹⁷⁸ From there, Tierney proceeds through the centuries, tracing the development of limits on the sovereign prince, consent theories of government, and the idea of the mixed constitution. With regard to the development of the theory of mixed

176. GOODRICH, *supra* note 1, at xviii.

177. BRIAN TIERNEY, *RELIGION, LAW, AND THE GROWTH OF CONSTITUTIONAL THOUGHT 1150-1650*, at 1 (1982).

178. *Id.*

constitutions, he tells that we could look—as Pocock would also do—to Renaissance humanism. Simultaneously, he explains that we should also look to the late-medieval conciliarists in their need to address the schism and the existence of more than one pope and vesting the authority of the Church more broadly in the councils of bishops when there was no single pope. In a parenthesis that stands out for not being parenthetical, Tierney offers: “(Perhaps we shall all eventually learn to see civic humanism and conciliarism as two alternative rhetorical strategies through which the communal ethos of the Middle Ages was transmitted to the early modern world.)”¹⁷⁹ And he ends his narrative with the seventeenth-century writings of George Lawson, which, he maintains, anticipated much of Locke’s writing of a few decades later. As he tells us, “Lawson’s work may seem as much a finale as a prelude.”¹⁸⁰ In his slim volume, then, Tierney has traced an evolution of constitutional ideas that builds on its past and progresses slowly by steps, and it travels from the Continent to England.

Kenneth Pennington, in *The Prince and the Law, 1200-1600*, similarly paces himself through an evolution of constitutional thought.¹⁸¹ In his first chapter, after referencing the sixteenth-century thought of Jean Bodin, Pennington moves backwards to establish the first stage of his evolutionary tale: “Although the terminology was different, the jurists of the twelfth century were the first since late antiquity to pose the question of whether the prince was bound by any laws.”¹⁸² From there, he is off to the races or, rather, to a slow progression regarding the positioning of the prince, rehearsing various versions of the prince’s sovereignty, with authority over “positive law” but whose authority was itself not absolute, whether bound alternatively by natural law, reason, or the commonwealth. As Pennington states toward the end of his book: “The evolution of political thought in the West is complex and varied.”¹⁸³

Quentin Skinner, in the second volume of his *Visions of Politics*, sets out a long argument that pre-humanist political leaders, drawing from Roman sources—primarily Cicero and Sallust in addition to the Codex of Roman law—represent the most significant background for the development of early modern European republican constitutionalism. For him, the “recovery and adaptation of Aristotle’s texts largely served to confirm and underpin two earlier traditions of thought in which the distinctive arrangements of the early communes had already been very effectively celebrated and legitimized.”¹⁸⁴ Like Tierney’s and

179. *Id.* at 87.

180. *Id.* at 98.

181. KENNETH PENNINGTON, *THE PRINCE AND THE LAW, 1200-1600: SOVEREIGNTY AND RIGHTS IN THE WESTERN LEGAL TRADITION* (1993).

182. *Id.* at 9.

183. *Id.* at 236.

184. QUENTIN SKINNER, *VISIONS OF POLITICS, VOL. 2: RENAISSANCE VIRTUES* 13 (2002).

Pennington's complicated evolutions, Skinner's involves the "recovery of classical values, including the values of republican self-government," as "a long and incremental process."¹⁸⁵ In a striking example of neo-Roman republicanism, Skinner provides a convincing analysis of Ambrogio Lorenzetti's fourteenth-century frescos in the Palazzo Pubblico in Siena depicting *The rule of tyranny*, *The rule of virtuous government*, and *The effects of virtuous government in the city*. Moving from fresco to fresco, he is able to demonstrate how Lorenzetti's political imagination was shaped by Cicero and Sallust. Skinner will also devote chapters to Machiavelli, Thomas More's *Utopia*, as well as to John Milton's political writings, in an effort to work through the development of European political and constitutional ideas. Although these chapters are episodic in the structure of the book, Skinner uses them to sketch the developmental process of political thought.

I have briefly introduced Tierney, Pennington, and Skinner as a small sample of the missing touchstones for Goodrich's account of legal emblems, part of the broader context of his narrative of Alciato's emblem book and its progeny. The historians I have chosen would not, I think, be uncongenial references for Goodrich. Like him, they are mostly engaged in long-term narratives. In fact, the so-called Cambridge School of historians—which includes Skinner as well as Pocock—is broadly contextualist, seeking to take in a wider picture. Pocock, for example, would make use of the *annaliste* term, *mentalité*, in an unmistakable gesture to the Annales School, as he does in his appendix written in 1986 for the republication of his study originally published in 1957, *The Ancient Constitution and the Feudal Law*. Indeed, referencing his original chapters on the *common-law mind*, Pocock titles a section, "The 'Common-Law Mind,' Considered as *Mentalité*."¹⁸⁶ Historians of constitutional, political, and legal thought, such as these, could have provided useful background for *Legal Emblems and the Art of Law*. All of Goodrich's sovereigns ruling but not governing are missing the back-story of deeper constitutional and legal history. Agamben is no substitute for an entire field of historical scholarship.

CONCLUSION: THE PAINT OF ROME AND ITS PENTIMENTO

Peter Daly instructs us that "[i]t should be remembered that emblems derive from the pre-Linnean period, and consequently what we may today identify as an egret might have been named 'pelican' in the early modern text."¹⁸⁷ When we enter the world of the emblem genre, we are well

185. *Id.*

186. J.G.A. POCK, *THE ANCIENT CONSTITUTION AND THE FEUDAL LAW: A STUDY OF ENGLISH HISTORICAL THOUGHT IN THE SEVENTEENTH CENTURY. A REISSUE WITH A RETROSPECT* 255-280 (1987).

187. DALY, *supra* note 22, at 9.

advised that we are entering a different world with different signposts. Goodrich has clearly brought us into this foreign world, with emphasis on its strangeness, one with ministers missing hands, hearts being speared, trees bursting out of mouths, and rows of men crawling on all fours; and he has made a strong case for his interpretation of the political theology of the emblem book tradition as it moves from the Continent and is adopted as a means of expression for the Anglican, common law imagination. With their Reformist iconoclasm, English lawyers had worked to eliminate the “paint of Rome,” but as Goodrich tells us in *Specters of the Law*, “[t]he Anglican lawyers never took off the paint of Rome.”¹⁸⁸ The emblem book, with its obvious Continental origins, was adapted for English purposes, but the Continental, the theatrical, the paint remained part of its essence.

Kantorowicz in *The King's Two Bodies* traces the background of Elizabethan concepts of the twinned natures of the king, the Body natural and the Body politic, to medieval sources, and then works forward to demonstrate the Christological structure of the Elizabethan “legal fiction.”¹⁸⁹ Kantorowicz describes the Elizabethan lawyers in Plowden's *Reports* resolving a case by turning to “the medieval concept of the king's *character angelicus*” and having thereby “gained a foothold on, so to speak, firm celestial ground.”¹⁹⁰ Goodrich's English lawyers are similarly caught up in medieval mysteries and the emblem book is one of the means of transmission. As mentioned above, “it is a foreign invention, an aspect of the *mos britannicus*, of a reformed Roman law of the visible brought to England and there used to show the common lawyers the deeper and civilian structure of what they see.”¹⁹¹

For Goodrich, the whole emblem book tradition is a treasure trove to raid in his effort to return the dynamism to a dry-as-dust profession with its pretensions of scientism. But, of course, he wants to have it both ways. His diagnosis of his profession is not merely its scientific self-mythologizing, its sense of the rationality of law and the lawyer; but in *Legal Emblems and the Art of Law* he also identifies the legal guild's use of theater to deny its own theatricality. Intersplined with his painting a vibrant picture of the emblem book with its immense wealth of meanings is Goodrich's ongoing argument about the myths that the legal profession marshals to create its own mystery, all of those incantations in obscure languages, whether Latin or law French. He is thus focusing on the very fact that the profession uses theater, but it also denies its theatricality. He feels that it needs to resurrect the vital energy of the past reflected in the

188. Goodrich, *supra* note 16, at 790.

189. Kantorowicz, *supra* note 130, at 42.

190. *Id.* at 8-9. Kantorowicz states that the Elizabethan, “to say the least, was crypto-theological” using “this semi-religious terminology.” *Id.* at 16.

191. GOODRICH, *supra* note 1, at 245.

emblem book at the same time as it recognizes how much it still draws from mysticism, even to the extent of drawing on the mysticism of the emblem books to enhance its own mystique.

As a guide for so much of his analysis in *Legal Emblems and the Art of Law*, Goodrich turns to Giorgio Agamben. It is, then, for us to ask exactly what Goodrich finally draws from Agamben, a philosopher who had long-running debates with Derrida and Foucault, who has drawn so much attention in the last couple of decades, and has also drawn so much criticism. In part, we have to turn to Agamben, particularly the Agamben of *The Kingdom and the Glory*. Jessica Whyte begins her study of Agamben's political thought with a quotation from a speech that Agamben gave in Notre Dame de Paris, where he tells his audience, including significant members of the clergy: "An evocation of final things, of ultimate things, has so completely disappeared from the statements of the Church that it has been said, not without irony, that the Roman Church has closed its eschatological window."¹⁹² Reading Agamben is strong stuff. Sergei Prozorov, in his study of Agamben's politics, talks of Agamben's "strong messianic pathos."¹⁹³ Despite Agamben's deep immersion in Christian political theology and Pauline teaching in *The Kingdom and the Glory*, his eschatology is ultimately not Christian eschatology. Indeed, Agamben's eschatology is finally not eschatological in the sense that the redemption Agamben envisions does not come at the end of time—it is not about final things. Rather, Agamben sees the present political order as using a delaying tactic, essentially kicking the messianic can down the road. Whyte talks of Agamben diagnosing an "eternal perpetuation of the present."¹⁹⁴ By comparison, Prozorov describes Agamben's own messianic vision as "the eruption of the *kairos*, a moment of rupture within history that carries an emancipatory possibility."¹⁹⁵ The emancipatory or redemptive in Agamben thus comes within time and it comes by way of the fusion of rule and administration. All the apparatuses of the current social and economic order, all the administration of the administrative state, halt. This is the *inoperativity*, the redemptive cessation, that Agamben offers us in a politics that is emphatically not active. Indeed, he has been criticized by Žižek, Hardt and Negri, and a host of others for not offering an active politics or a post-revolutionary order,¹⁹⁶ for his redemptive moment is marked by extreme passivity.

What, then, does Goodrich derive from Agamben? Goodrich turns to

192. JESSICA WHYTE, CATASTROPHE AND REDEMPTION: THE POLITICAL THOUGHT OF GIORGIO AGAMBEN 1 (2013), citing GIORGIO AGAMBEN, THE CHURCH AND THE KINGDOM 27 (Leland De La Durantaye trans., 2012).

193. PROZOROV, *supra* note 112, at 184.

194. WHYTE, *supra* note 192, at 9.

195. *Id.* at 126.

196. PROZOROV, *supra* note 112, at 178.

Agamben repeatedly, citing his analyses—such as the signification of Glory as the empty throne—and adopting his formulations. Over and over again, we hear Goodrich’s recitation of the “crescendos of optical images.” We are, in fact, encouraged to see Agamben as perhaps the most important key to various elements of Goodrich’s mysterious emblem world. Goodrich wants to tap the energy of the world of the emblem book, and he turns to Agamben to help him tap that energy. Agamben is a poetic force for Goodrich as he draws energy from Agamben’s crescendos of light. Nevertheless, Agamben is positioned as a scholarly source, so that Goodrich will state that “Giorgio Agamben has developed this point at length” and “Agamben, again, is instructive.”¹⁹⁷ That does not mean that Goodrich shares none of Agamben’s politics. He shows fondness for Agamben’s retooling of Carl Schmitt’s “state of exception” to view, following response to 9/11, the modern state as essentially founded on the “state of exception,”¹⁹⁸ and for Agamben’s reworking of Guy Debord’s “society of the spectacle”¹⁹⁹—which was so important in May ‘68—as part of his own critique of the spectacular society of modern capitalism and its diverted attention. Nevertheless, it is Agamben’s special vision that is so attractive to Goodrich. It is only via Agamben that he can talk about the emblem tradition being “time and again directed toward indicating the divine causes of things and the angelological structure of law.”²⁰⁰ If it is odd to see the very playful Goodrich—the Goodrich who can utter with regard to his book, “obscurely brilliant as the present study may be deemed”²⁰¹—following Agamben’s lead, it is because Agamben has captured Goodrich’s imagination.

It is interesting that the conclusion to *Legal Emblems and the Art of Law* does not reference Agamben’s name a single time despite the references to the “angelological structure of the law” and to “choral glamor and glory” as well as displaying other characteristically Agambian formulations and thought patterns. In his conclusion, Goodrich makes an effort to go step by step through a series of observations on how the legal emblem and images function. He starts by asserting—a bit counter-intuitively considering his view of the multivalence of the image—that “none of these legal visibilities, historical and contemporary, are left to chance.”²⁰² In fact, as theatrical as law is, it is the product of “carefully wrought staging.”²⁰³ Goodrich will repeat his conviction of the “primacy of the legal image” in the emblem book and turn to the paradox of the emblem being a humanistic invention whose subject matter was nonetheless

197. GOODRICH, *supra* note 1, at 94, 96.

198. GIORGIO AGAMBEN, *STATE OF EXCEPTION* (Kevin Attell trans., 2005).

199. GUY DEBORD, *SOCIETY OF THE SPECTACLE* (Black & Red, 2010) (1967).

200. GOODRICH, *supra* note 1, at 247.

201. *Id.*

202. *Id.*

203. *Id.*

dogmatic.²⁰⁴ It is no surprise that this paradox hardly limits the fluidness of the image. If “law collides with aesthetics and poetics,”²⁰⁵ the result is nevertheless creative. This is where Goodrich talks of the period of the emblem book as “the inescapably creative moment of legal regulation.”²⁰⁶ If the emblem book is humanistic, it engages a variety of disciplinary realms. And by using images, it is “populist in scope” but leads quickly to “opaque matter.” The emblem book’s very populism serves to underscore the special access involved in legal knowledge. That brings Goodrich to the functional relationship between image and text: “The words lead to the image, and the image to the message that cannot be seen or stated.”²⁰⁷ He refers to the “apparent control of the image by the word” but, clearly, the word does not control, for there is an *inscription* that “precedes writing: a first law.”²⁰⁸ For Goodrich, that first law, that *inscription*, precedes the stated word. The emblem book, he tells us, “requires a theoretical opening to the image, a reversal of the singularly textualist and transcendently literalist attitude of modern lawyers.”²⁰⁹

As a continuation of Goodrich’s ongoing project, *Legal Emblems and the Art of Law* describes the emblem book as conveying multiple meanings as Goodrich repeatedly talks of its multivalence and, as he interprets one emblem, makes an aside that “it has greater, different, and many more meanings than are currently contemplated.”²¹⁰ Goodrich is well ensconced in the valorization of the *aporia*, which has been one of the hallmarks of poststructuralist writing for decades—we can now only look with pity at William Empson, whose pre-structuralist fervor for New Critical complexity led him to only seven types of ambiguity.²¹¹ And as Goodrich did in his previous works, he uses the emblem book to bring multiple disciplines to law. This is not merely a matter of adding art history and some iconographical, perhaps even iconological, insight, but rather looking at the visual in a much deeper sense. If no one could expect that his study of early modern emblem books would involve chiology, the rhetorical art of hand gestures, more importantly Goodrich turns over and over notions about what the visual means and where the visible points to the invisible. Goodrich’s book also attempts to hit multiple registers, using the theatrical and the choral to transcend the merely human register.

All of this is meant to expand his earlier project, the re-enchantment of law. Perhaps *Legal Discourse* was less about enchantment than the social context of discourse, but it already meant an enriching of a hide-bound

204. *Id.* at 248.

205. *Id.* at 249.

206. *Id.*

207. *Id.* at 253.

208. *Id.* at 259.

209. *Id.* at 263.

210. *Id.* at 21.

211. WILLIAM EMPSON, SEVEN TYPES OF AMBIGUITY (1930).

legal discipline. But, certainly, *Law and the Courts of Love* champions a re-enchantment of law, reintroducing law's past enchantment. So too does Goodrich's legal emblem book attempt a radical re-enchantment of law through its confrontation with that earlier, "inescapably creative moment of legal regulation."

The re-enchantment of law through the emblem book tradition also introduces Goodrich's reader into a world of the mysterious. All those strange images did not merely lead to the invisible simply in the common sense of common law's being rooted in the immeasurable past, that the truths of the common law predate the work of the legislator. Here the mystical is otherworldly, not only with divine hands reaching into the visual plane of the emblem book image, but otherworldly interactions with the otherworldly. One of the final images of Goodrich's book, from Francis Quarles's *Emblems*, shows a kneeling individual with an arrow bursting upward from his chest and three more arrows, each with a narrow banner with words, racing into a heavenly image of the sun, which has two detached human ears and a hand reaching out from its core. This is a strange and mysterious image coming toward the very end of a book populated by strange and mysterious images, for Goodrich has clearly established his subject-matter as mysterious. And he uses Agamben to good effect here. All those Agambian references to angelological orders, to choral glamour, and to crescendos of optical images at once add to the mystery of the emblem book and engage Goodrich's study in a genealogy of the mysterious.

But I would like to go further and suggest that Goodrich wraps himself up in mystery. To some degree he is very playful in this—"My point, however, is highly specific and somewhat unusual."²¹² Goodrich underscores that emblem images opened up a world to a lay audience, making the image world easily seen, but the accessibility had its limits and inevitably led to opacity. The images, he instructs us, obscure at the same time that they reveal. We should, I think, understand Goodrich as creating his own opacity just as he reveals the liveliness of the legal emblem. Goodrich oddly makes quite a deal about his five-point conclusion, suggesting that his final remarks are fairly straightforward. Indeed, my short overview above takes short cuts and does not faithfully replicate the complexity and the opacity of his concluding pages. Reading Goodrich, it is clear that he himself clouds our ability to understand exactly where his study lands. He uses Agamben not only to enter a mysterious realm of study but also to introduce mystery into the study's methodology. If Sergei Prozorov is right, no one can quite get Agamben, not Derrida, not Foucault, and not the collaboration of Hardt and Negri. Agamben offers more than late-poststructuralist, high-theory bona fides; he adds an extra

212. GOODRICH, *supra* note 1, at 250.

layer of esotericism to Goodrich's study. I have mentioned that Goodrich does not let the colleges of emblem specialists or constitutional historians frame his subject—Skinner and Pocock's renderings of political thought, despite their immense sophistication, would prove just too banal next to Agamben's reworking of Carl Schmitt's "state of exception" in the aftermath of 9/11. Goodrich is quite convincing on the theatricality of the current legal profession's denying its own theatricality. And he understands that despite the virtues of the theatricality of emblem book creators, that theater also constituted a warding off, the opacity of the emblem that makes its interpretation a priestly labor by the legal expert—"only the pure, the poets, priests, lawyers, gain knowledge."²¹³ So, too, Goodrich has engaged in a self-mythologizing as his book also involves a warding off.

213. *Id.* at 258.



Figure 1. Custom as Second Nature (*consuetudo est altera natura*), in Jacobus Borningius, *EMBLEMATUM ETHICO-POLITICORUM* (Heidelberg: Bourgeat 1654) emblem 45. Courtesy of Beinecke Rare Book and Manuscript Library, Yale University.



Figure 2. *Edward VI and the Pope* (c. 1568 group portrait). © National Portrait Gallery, London.



Figure 3. *The Prince's Administration (aministri principum)*, in Solorzano, *EMBLEMATA* emblem 54. Courtesy of the Rare Book Collection, Lillian Goldman Law Library, Yale Law School.